

## **CORPORATE FRANCHISE TAX**

### **STATUTORY PROVISION**

Title 8, Delaware Code, Chapter 5

### **COLLECTION/ADMINISTRATIVE AGENCY**

The Secretary of State administers the corporate franchise tax.

### **GENERAL LIABILITY**

Domestic corporations must pay a corporate franchise tax for the privilege of being incorporated in Delaware. Retention of a charter by a corporation creates an obligation to pay the tax unless specifically exempted by law. Companies incorporated in another state, but doing business in Delaware, must also register with the Secretary of State. Banks and certain other financial institutions pay a franchise tax to the Bank Commissioner in lieu of the corporate franchise tax.

### **TAX RATES**

Domestic corporations are taxed based on the number of authorized shares at the following tax rates:

<u>Corporations With:</u>	<u>Fee:</u>
Up to 5,000 shares	\$75.00 (Minimum Tax)
5,001 - 10,000 shares	\$150.00
Over 10,000 shares	\$150.00, plus \$75.00 for each additional 10,000 shares or part thereof, not to exceed \$165,000

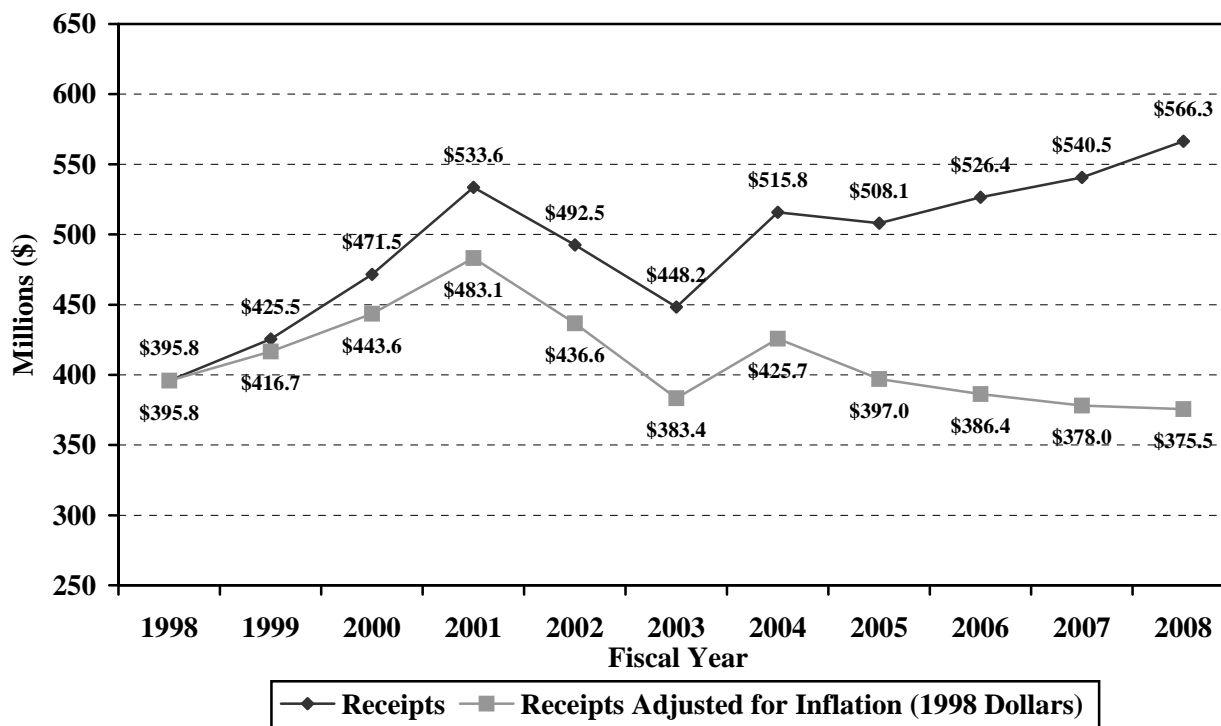
The maximum tax on regulated investment companies is \$75,000. Inactive corporations pay 50% of the amount otherwise due, but never less than \$75.

Domestic corporations may also opt to pay taxes based on the assumed par value capital method. The tax rate using this method is \$250 per \$1 million or portion of a \$1 million assumed par value capital. The assumed par value capital is calculated using a formula that takes into account a corporation's issued shares, authorized shares and total gross assets.

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### TAX RECEIPTS

#### Corporate Franchise Tax



### LEGISLATIVE HISTORY

Approved Date	Effective Date	Description of Changes
5/27/65	1/1/66	Assigned corporate franchise tax administrative responsibilities to the Secretary of State (55 Del. Laws c 90).
6/23/69	7/15/69	Set franchise tax minimum at \$20 and maximum at \$110,000. Increased other rates by 10% (57 Del. Laws c 150).
6/7/69	-	Removed the former exemption for professional corporations (57 Del. Laws c 127).
5/16/70	7/1/70	Moved the last day for payment to June 1, from July 1 (57 Del. Laws c 421).
7/15/70	1/1/70	Mandated revocation of charters for corporations in arrears for more than a year (previously two years) (57 Del. Laws c 712).
6/12/72	1/1/73	Moved the last day for payment to March 1, from June 1. Required corporations to

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		compute their own taxes (58 Del. Laws c 450).
4/8/76	5/1/76	Made tax due on a quarterly basis for corporations whose annual liability is expected to exceed \$5,000 (60 Del. Laws c 353; HB 834).
7/2/84	1/1/84	Increased rates on domestic corporations to a minimum of \$30 (was \$20) and to a maximum of \$130,000 (was \$110,000). Raised rates for regulated investment companies to \$200 (was \$181.50) for each \$1 million of average gross assets; and maximum tax to \$65,000 (was \$55,000). Increased the penalty for failure to file timely tax reports \$50, from \$25 (64 Del. Laws c 317; HB 500).
7/7/89	7/7/89	Allowed the Secretary of State to increase fees charged for expedited services (67 Del. Laws c 99; SB 245).
6/12/90	6/12/90	Increased various corporate filing fees (67 Del. Laws c 229; HB 628).
7/1/91	1/1/91	Increased rates on all corporations except those with less than 3,000 shares of capital stock. Maximum tax rate increased to \$150,000, from \$130,000 (68 Del. Laws c 81; HB 348).
7/1/91	1/1/92	Changed the estimated tax payment schedule for corporations whose liability is expected to exceed \$5,000: June 1, 40% (formerly 25%); September 1, 20% (formerly 25%); December 1, 20% (formerly 25%); March 1, balance of tax as determined at close of calendar year (68 Del. Laws c 81; HB 348).
7/11/91	7/11/91	Increased the fee – paid in lieu of franchise taxes and penalties -- for corporations that renew their certificates of incorporation after having been voided for five or more years, to three times the annual amount of the annual franchise tax payment (formerly two times) (68 Del. Laws c 163; HB 141).
5/15/92	5/15/92	Increased the interest penalty for unpaid tax to 1.5% per month (formerly 1.0% per month) (68 Del. Laws c 246; HB 467).
7/1/92	7/1/92	Authorized the Department of State to enter into a written agreement with private contractors for the purpose of collecting franchise taxes that are six or more months past due. Empowered the Secretary of State to establish the terms of any contract, including the method of payment (68 Del. Laws c 290; SB 444).
6/30/93	6/30/93	Removed the requirement that a corporation's annual franchise tax report specify the date appointed for the next annual meeting of the stockholders for the election of directors. Required the report must also include the names and addresses of all the directors and no more than two of the officers (69 Del. Laws c 53; SB 104).

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<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
6/30/93	6/30/93	Required the Secretary of State to forward annual franchise tax reports on request and keep returned reports open for public inspection (69 Del. Laws c 54; SB 105).
7/1/93	6/30/93	Permitted Delaware corporations to merge or consolidate with limited liability companies of this state, any other state, or the District of Columbia, unless the other states or the District of Columbia forbid the merger or consolidation (69 Del. Laws c 61; SB 146).
7/2/99	7/1/99	Provided that any corporation of this State may convert to a limited liability company (LLC), limited partnership (LP) or business trust of this State upon obtaining the requisite approval, including the approval of the holders of all outstanding shares of stock of the corporation, whether voting or nonvoting, and the filing of a certificate of conversion with the Secretary of State (72 Del. Laws c 123; SB 137).
7/2/99	8/1/99	Permitted for the conversion of a corporation to a limited partnership (LP) and the conversion of a LP to a corporation and confirms that a limited partnership that has been converted continues as the same entity (72 Del. Laws c 128; SB 177).
7/2/99	8/1/99	Permitted the conversion of a corporation to a limited liability company (LLC) and the conversion of a LLC to a corporation and confirms that a LLC that has been converted continues as the same entity (72 Del. Laws c 129; SB 178).
6/19/03	1/1/03	Increased rates on all corporations. Minimum tax increased to \$35 (from \$30); maximum tax increased to \$165,000 (from \$150,000). Increased the tax for neglect, refusal, or failure to file an annual franchise tax report to \$100 (from \$50) (74 Del. Laws c 51; HB 267).
6/19/03	8/1/03	Increased the annual franchise tax report fee to \$25 (from \$20) (74 Del Laws c 51; HB 267).
6/27/06	1/1/07	Implemented a \$100 penalty for failure to file a complete annual franchise tax report. (75 Del Laws c 306; SB 322).
7/1/08	1/1/08	Increased rates on all domestic corporations paying on the authorized shares method. Minimum tax increased to \$75 (from \$35). Maximum tax rate and assumed par value method unchanged. Increase annual report fee for foreign corporations from \$60 to \$100. (76 Del Laws c 286; HB 519).

## **FILING PROCEDURES**

## **CORPORATE FRANCHISE TAX**

All domestic corporations must file an Annual Franchise Tax Report with the Secretary of State on or before March 1 each year. All companies incorporated in Delaware and which hold stock must pay: 1) an annual filing fee of \$25; and 2) a franchise tax of not less than \$75, but not more than \$165,000. Corporations without stock (non-profit organizations, churches, etc.) pay only the \$25 filing fee. Foreign corporations (companies incorporated elsewhere but doing business in Delaware) pay a \$100 annual report filing fee, due June 30th, but do not pay franchise taxes.

### **PAYMENT DATES**

Corporations with expected annual liabilities of less than \$5,000 must make their annual franchise tax payments on or before March 1 each year. Corporations with expected liabilities of \$5,000 or more must make quarterly payments according to the following schedule:

First Payment	Due June 1, 40% of payment.
Second Payment	Due September 1, 20% of payment.
Third Payment	Due December 1, 20% of payment.
Final Payment	Due March 1, balance of payment.

### **PENALTIES FOR FAILURE TO FILE**

Delaware Code requires a penalty in the amount of \$100 be applied to all corporations which have not filed an Annual Franchise Tax Report on or before March 1. Interest upon unpaid taxes and penalties accrues at a rate of 1.5% per month or portion thereof. If any corporation neglects or refuses to pay franchise taxes for one year, its charter is declared null and void.